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By: William R. Burns, Esq. (018892001)

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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**KYLE BERMUDEZ,**

Plaintiff,

vs.

**ROWAN COLLEGE AT  
BURLINGTON COUNTY,**

Defendant.

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: Civil Action No.:

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**NOTICE OF REMOVAL TO  
FEDERAL COURT**

*Document Electronically Filed*

[Previously pending in the Superior  
Court of New Jersey, Law Division,  
Burlington County, BUR-L-2495-18]

**TO: CHIEF JUDGE AND JUDGES OF THE  
UNITED STATES DISTRICT COURT  
FOR THE STATE OF NEW JERSEY**

**ON NOTICE TO:**

Clerk of the Court, Law Division

Superior Court of New Jersey, Burlington County

49 Rancocas Road

Mount Holly, New Jersey 08060

Honorable Jeanne T. Covert, P.J.S.C.  
Superior Court of New Jersey, Burlington County  
49 Rancocas Road, 3<sup>rd</sup> Floor  
P.O. Box 6555  
Mount Holly, New Jersey 08060

Kyle Bermudez  
4 Colonial Court  
Hainesport, New Jersey 08036

**PLEASE TAKE NOTICE** that Defendant Rowan College at Burlington County [hereinafter the “College”] hereby gives notice of the removal of the above-captioned action from the Superior Court of New Jersey, Law Division, Burlington County, to the United States District Court for the District of New Jersey, pursuant to 28 U.S.C. §1441 and §1446, as amended, and in accordance with 28 U.S.C. §1331.

In support of this Notice of Removal, Defendant hereby states:

1. Plaintiff Kyle Bermudez [hereinafter the “Plaintiff”] commenced this action on or about November 12, 2018 by filing a Complaint and accompanying exhibits in the Superior Court of New Jersey, Burlington County, entitled Kyle Bermudez v. Rowan College at Burlington County, Docket No. BUR-L-2495-18 [hereinafter the “State Court Action”].
2. The College was served with a copy of the Complaint and Exhibits on April 17, 2019.

3. Plaintiff's Complaint asserts claims against the College in connection with the Plaintiff's temporary suspension from the College's Nursing Program in 2016 and subsequent denial of application to return to the Nursing Program in 2017; including violations of the Americans With Disabilities Act ("ADA"), 42 U.S.C. §12101 et seq. and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 et seq.

4. The College submits that each of the claims submitted by Plaintiff are frivolous, but because Plaintiff's claims arise under and implicate the Constitution of the United States, the Americans with Disabilities Act, Section 504 of Rehabilitation Act of 1973 and potentially 42 U.S.C. §1983, the College hereby seeks to remove the State Court Action to the United States District Court of New Jersey.

5. Pursuant to 28 U.S.C. §1446(a), a copy of all process, pleadings, and orders served upon the College and/or filed in the State Court Action are attached to this Notice as "Exhibit A."

6. Under New Jersey civil practice rules, the College has 30 days after receipt, through service or otherwise, of the initial pleading to answer, move to dismiss, or otherwise respond to the Complaint the College was served on April 17, 2019. Thus, the College's time to respond to the Complaint has not expired. The College

reserves its right under Fed. R. Civ. P. 81 to hereafter answer or present other defenses or objections in accordance with the Federal Rules of Civil Procedure.

7. Pursuant to 28 U.S.C. §1446(b), a Notice of Removal must be filed within 30 days of service of the Complaint. This Notice of Removal, which is being filed on May 15, 2019, is timely because the College was served on April 17, 2019.

8. Concurrent with the filing of this Notice and in accordance with 28 U.S.C. §1446(d), the College is serving this Notice on Plaintiff, who is appearing pro se, and filing a copy of the Notice with the Clerk of the Superior Court of New Jersey, Law Division, Burlington County, along with a Notice of Notice of Removal, in the form attached as “Exhibit B.”

9. The United States District Court for the District of New Jersey includes Burlington County, where the State Court Action is currently pending. Venue is therefore proper for this Notice of Removal under 28 U.S.C. §§110, 1446(a).

**Removal is Proper Because This Court Has Original Jurisdiction**

10. Under 28 U.S.C. §1441, “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

11. Because this Court has original subject matter jurisdiction over this action, the College may remove this action pursuant to 28 U.S.C. §§1441(a), 1446.

12. Plaintiff asserts four causes of action against the College, which include purported violations of the ADA, 42 U.S.C. §12181 et seq., and the Rehabilitation Act of 1973, 29 U.S.C. §794 et seq, the United States Constitution and potentially 42 U.S.C. §1983. As a result of the foregoing, this action arises “under the Constitution, laws, or treaties of the United States,” and this Court has original jurisdiction over this action pursuant to 28 U.S.C. §1331.

13. This Court additionally has original jurisdiction over the remaining state law claims pursuant to 28 U.S.C. §1367 because such claims are related to Plaintiff’s federal law claims that form part of the same case or controversy.

14. No admission of fact, law or liability is intended by the filing of this Notice of Removal and the College hereby preserves any and all defenses, objections and/or motions available under state and/or federal law.

### **CONCLUSION AND PRAYER**

**WHEREFORE**, pursuant to 28 U.S.C. §§1441, 1446, as amended, and in accordance with 28 U.S.C. §§1331, 1367, the College respectfully removes the above-captioned civil action, which is currently pending in the Superior Court of New Jersey, Law Division, Burlington County, to the United States District Court

for the District of New Jersey, and request that all further proceedings be conducted in this Court as provided by law.

Respectfully submitted,  
MALAMUT & ASSOCIATES, LLC  
*Attorneys for Defendant*  
*Rowan College at Burlington County*

By: /s/ William R. Burns  
William R. Burns, Esq.

Dated: May 13, 2019